MONTANA LEGISLATIVE HISTORY

Chapter 524 ~~19~~ 2001

Bill H 521 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	2-14	✓ C	Hearing Date(s)	3-22	✓ C
		C		3-23	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/01/2001			
(H) Signed by Governor	05/01/2001			
(H) Transmitted to Governor	04/21/2001			
(S) Signed by President	04/21/2001			
(H) Signed by Speaker	04/19/2001			
(H) Returned from Enrolling	04/18/2001			
(C) Sent to Printing	04/17/2001			
(H) Sent to Enrolling	04/17/2001			
(H) Motion Carried	04/17/2001			
(H) 3rd Reading Passed as Amended by Senate	04/17/2001	100	0	
(H) 2nd Reading Senate Amendments Concurred	04/16/2001	99	1	
(H) Scheduled for 2nd Reading	04/16/2001			
(S) Returned to House with Amendments	03/28/2001			
(S) 3rd Reading Concurred	03/28/2001	48	0	
(S) Scheduled for 3rd Reading	03/28/2001			
(S) 2nd Reading Concurred on Voice Vote	03/27/2001	47	0	
(S) Scheduled for 2nd Reading	03/27/2001			
(C) Sent to Printing	03/24/2001			
(S) Committee Report--Bill Concurred as Amended	03/24/2001			(S) Judiciary
(S) Committee Executive Action--Bill Concurred as Amended	03/24/2001	7	0	(S) Judiciary
(S) Hearing	03/22/2001			(S) Judiciary
(S) Hearing Canceled	03/16/2001			(S) Judiciary
(S) Referred to Committee	02/28/2001			(S) Judiciary
(S) First Reading	02/28/2001			
(H) Transmitted to Senate	02/21/2001			
(H) 3rd Reading Passed	02/21/2001	100	0	
(H) Scheduled for 3rd Reading	02/21/2001			
(H) 2nd Reading Passed	02/20/2001	98	0	
(H) Scheduled for 2nd Reading	02/20/2001			
(H) Committee Report--Bill Passed	02/16/2001			(H) Judiciary
(H) Committee Executive Action--Bill Passed	02/16/2001	19	0	(H) Judiciary
(H) Hearing	02/14/2001			(H) Judiciary
(C) Introduced Bill Text Available Electronically	02/08/2001			

(H) Referred to Committee	02/08/2001			(H) Judiciary
(H) First Reading	02/08/2001			
(H) Introduced	02/08/2001			
(C) Draft Delivered to Requester	02/07/2001			
(C) Draft Ready for Delivery	02/02/2001			
(C) Draft in Assembly/Executive Director Review	02/01/2001			
(C) Draft in Final Drafter Review	01/31/2001			
(C) Bill Draft Text Available Electronically	01/31/2001			
(C) Draft in Input/Proofing	01/31/2001			
(C) Draft to Drafter - Edit Review [CMD]	01/31/2001			
(C) Draft in Edit	01/30/2001			
(C) Draft in Legal Review	01/30/2001			
(C) Draft to Requester for Review	01/30/2001			
(C) Draft to Requester for Review	01/26/2001			
(C) Draft Request Received	01/08/2001			

HOUSE BILL NO. 521

INTRODUCED BY B. NEWMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT BEFORE AN ENHANCED INCARCERATION PENALTY MAY BE IMPOSED, THE ENHANCING ACT, OMISSION, OR FACT MUST BE STATED IN THE CHARGING DOCUMENT, SUBMITTED TO A JURY FOR DETERMINATION IF THERE IS A JURY TRIAL, AND FOUND BY THE TRIER OF FACT TO HAVE EXISTED BEYOND A REASONABLE DOUBT; DEFINING ENHANCING ACT, OMISSION, OR FACT; PROVIDING THAT THE MENTAL STATE APPLICABLE TO THE UNDERLYING OFFENSE APPLIES TO THE ENHANCING ACT, OMISSION, OR FACT; AMENDING SECTIONS 45-5-222, 46-18-115, 46-18-220, 46-18-221, AND 46-18-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Incarceration penalty enhancement -- pleading, proof, and mental state requirements.** (1) A court may not impose an incarceration penalty enhancement specified in Title 45, Title 46, or any other provision of law unless:

(a) the enhancing act, omission, or fact was charged in the information, complaint, or indictment, with a reference to the statute or statutes containing the enhancing act, omission, or fact and the penalty for the enhancing act, omission, or fact;

(b) if the case was tried before a jury, the jury unanimously found in a separate finding that the enhancing act, omission, or fact occurred beyond a reasonable doubt; and

(c) if the case was tried to the court without a jury, the court finds beyond a reasonable doubt that the enhancing act, omission, or fact occurred.

(2) The enhancement issue may be submitted to a jury on a form separate from the verdict form or may be separately stated on the verdict form. The jury must be instructed that it is to reach a verdict on the offense charged in the information, complaint, or indictment before the jury can consider whether the enhancing act, omission, or fact occurred.

(3) An enhancing act, omission, or fact is an act, omission, or fact, whether stated in the statute defining the charged offense or stated in another statute, that is not included in the statutory definition of the elements of the charged offense and that allows or requires a sentencing court to add to, as

provided by statute, an incarceration period provided by statute for the charged offense or to impose the death penalty instead of a statutory incarceration period provided by statute for the charged offense. An enhancing act, omission, or fact includes but is not limited to:

(a) bodily injury;

(b) serious bodily injury;

(c) property damage;

(d) use of a weapon or of a certain type of ammunition;

(e) the age of the victim or age difference between the defendant and the victim;

(f) monetary value or amount of loss, damage, or theft;

(g) commission of an offense for the benefit of, at the direction of, or in association with one or more other persons; and

(h) commission of an offense at or in a certain place or within a specified distance of a certain place.

(4) Use of the fact of one or more prior convictions for the same type of offense or for one or more other types of offenses to enhance the incarceration penalty for a charged offense is not subject to the requirements of this section.

(5) The mental state that applies to the elements of the offense that is enhanced also applies to an act, omission, or fact used to enhance the incarceration penalty for that offense unless a different mental state is provided in the statute creating the enhancing act, omission, or fact. The mental state for the enhancing act, omission, or fact must, as provided in subsections (1) and (2) with respect to the enhancing act, omission, or fact, be charged in the information, complaint, or indictment and must be found by the trier of fact to have existed beyond a reasonable doubt.

Section 2. Section 45-5-222, MCA, is amended to read:

"45-5-222. Sentence enhancement -- offenses committed because of victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities. (1) A person who has pleaded guilty or nolo contendere to or who has been found guilty of any offense, except malicious intimidation or harassment, that was committed because of the victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities or that involved damage, destruction, or attempted destruction of a building regularly used for religious worship, in addition to the punishment provided for commission of the offense, may, if the provisions of [section 1] have been complied with, be sentenced

to a term of imprisonment of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by subsection (1) ~~shall~~ must run consecutively to the sentence, except as provided in 46-18-222."

Section 3. Section 46-18-115, MCA, is amended to read:

"46-18-115. Sentencing hearing -- use of two-way electronic audio-video communication. Before imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

(1) The court shall afford the parties an opportunity to be heard on any matter relevant to the disposition, including the ~~applicability of sentencing enhancement provisions,~~ imposition of a sentence enhancement penalty and the applicability of mandatory minimum sentences, persistent felony offender status, or an exception to these matters.

(2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided by 46-18-301.

(3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address the defendant personally to ascertain whether the defendant wishes to make a statement and to present any information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so. For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, the requirement that the court address the defendant personally may be satisfied by the use of two-way electronic audio-video communication. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201.

(4) (a) The court shall permit the victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

(b) The court shall give copies of any written statements of the victim to the prosecutor and the defendant prior to imposing sentence.

(c) The court shall consider the victim's statement along with other factors. However, if the

victim's statement includes new material facts upon which the court intends to rely, the court shall allow the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

(5) The court shall impose sentence or make any other disposition authorized by law.

(6) In felony cases, the court shall specifically state all reasons for the sentence, including restrictions, conditions, or enhancements imposed, in open court on the record and in the written judgment."

Section 4. Section 46-18-220, MCA, is amended to read:

"**46-18-220. Sentences for certain offenses committed in official detention -- death penalty.** An offender convicted of having committed attempted deliberate homicide, aggravated assault, or aggravated kidnapping while in official detention, as defined in 45-2-101, shall, if the provisions of [section 1] have been complied with, be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310."

Section 5. Section 46-18-221, MCA, is amended to read:

"**46-18-221. Additional sentence for offenses committed with a dangerous weapon.** (1) ~~A~~ If the provisions of [section 1] have been complied with, a person who has been found guilty of any offense and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of such offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) ~~A~~ If the provisions of [section 1] have been complied with, a person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in 46-18-222. For the purposes of this subsection, the following persons shall be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion than the present offense, under 18 U.S.C. 924(c); and

(b) a person who has previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which he knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous

weapon.

(3) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in 46-18-222.

(4) An additional sentence prescribed by this section ~~shall~~ must run consecutively to the sentence provided for the offense."

Section 6. Section 46-18-224, MCA, is amended to read:

"**46-18-224. Additional sentence for offense committed while carrying a handgun loaded with armor-piercing ammunition.** (1) ~~A~~ If the provisions of [section 1] have been complied with, a person who has been found guilty of an offense in which bodily injury occurred or was attempted or threatened and who knowingly used or carried a handgun loaded with armor-piercing ammunition during the commission of the offense must, in addition to the sentence for the offense, be sentenced to a term of imprisonment in the state prison of not less than 5 years or more than 25 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by this section must run consecutively to the sentence provided for the offense, and except as provided in 46-18-222, the sentence may not be suspended and imposition of it may not be deferred.

(3) For purposes of this section:

(a) "armor-piercing ammunition" means ammunition which, if fired from a handgun under the test procedure of the national institute of law enforcement and criminal justice standard for the ballistics resistance of police body armor promulgated December 1978, is capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as formulated by the United States department of justice and published in December 1978; and

(b) "handgun" means any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand."

NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 1, and the provisions of Title 46 apply to [section 1].

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 14, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 261 - 2-12-01**
HB 545 - 2-12-01
HB 546 - 2-12-01

HB 521 - 2-12-01

Executive Action: **HB 254 - DPAA**
HB 419 - DPAA
HB 521 - DP
HB 545 - Table
HB 546 - Table

HEARING ON HB 261

Sponsor: Rep. Larry Jent, HD 29, Bozeman said this Bill is directed toward the drug methamphetamine. This is the worst drug of all the illegal drugs. There have been many cases in federal courts and every methamphetamine case he has been involved in, there has been a murder. The reason is, this drug is a highly addictive drug, a drug that causes people to be hyperactive. They become paranoid, start hallucinating and then carry guns.

The cooking of methamphetamine is extremely toxic. It takes specially trained drug officers to clean up a methamphetamine lab because they need the special training, equipment and the necessary precautions. It can cost thousands of dollars to clean up a lab. It is illegal to possess, sell or possess precursors of methamphetamine which include the chemicals that make up the drug. Between the possession of the precursors and the in-product, there is the drug lab.

The Bill seeks to create a new crime of having the lab. This is not a Bill that seeks to criminalize the possession of flasks, beakers and condensers because in the Bill the requirement or the intent is to actually make the product.

The Bill provides penalties for possessing the precursors with the intent to set up a lab, possessing the equipment with the intent, or selling the makings of a lab. It provides for a penalty of 20 years not to exceed 25 years if there is a substantial risk to safety, or within 500 feet of a business, residence or church, or there is a juvenile present, or a firearm or booby trap.

EXHIBIT(juh37a01) EXHIBIT(juh37a02)

Proponents: Joe Thaggart, Assistant Attorney General, Montana Department of Justice.

Jim Hutchison, Forensic Toxicologist, Lab Supervisor, Crime Lab.

present. That standard is more in keeping with what we do in our legal system now with regard to changes for child support modification.

Proponents: None

Opponents: None

Questions from Committee Members and Responses: Reps. Harris, Hurdle, Noennig, Peterson, Shockley to Rep. Gallik for explanation and clarification.

{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 29.8}

Closing by Sponsor: Rep. Gallik closed the Hearing on HB 545 and HB 546.

HEARING ON HB 521

Sponsor: Rep. Brad Newman, HD 38, Butte said the State of Montana does have some enhanced penalties. For example, an assault against a person under the age of 14 has an enhanced penalty. If someone causes bodily injury to another adult it is a misdemeanor. If that same bodily injury is to a child, it becomes a felony.

This past summer, the Supreme Court ruled that the State, or prosecution, in a situation that involves enhanced penalties must plead and prove the enhancing factor or the enhancing circumstance. For example, in the case of an assault with a weapon, or possibly some other offense with the use of a weapon, the prosecution has the burden to prove beyond a reasonable doubt, all the elements of the underlying offense, plus the burden to prove by that same standard, the enhancement factor, the use of a weapon in the commission of the crime.

Prosecutors' responses to how they go about getting these enhanced penalties have been sporadic, have been inconsistent. Based on the Supreme Court decision, it is clear that as a legislative matter, or a matter of state policy, we need to provide some direction to prosecutors. This Bill will make it uniform. This also provides protection for the accused.

Proponents: John Connor, Attorney General's Office, Montana County Attorney's Association and the Department of Justice said the Bill will amend the law or create a provision in the law that is consistent with the United States Supreme Court decision, Apprendi vs. New Jersey.

Opponents: None

Questions from Committee Members and Responses: **Reps. Harris, Peterson, Shockley to Mr. Connor.**

Closing by Sponsor: **Rep. Newman closed the Hearing on HB 521** by quoting **Mr. Connor.** "If you are a champion of the rights of the accused you will like this Bill. If you are an officer of the Court and you are bound to do the right thing, you will live with this Bill".

EXECUTIVE ACTION ON HB 521

Motion/Vote: **REP. GUTSCHE** moved that **HB 521 DO PASS. #1** Motion carried unanimously 20-0.

EXECUTIVE ACTION ON HB 465

Motion/Vote: **REP. NOENNIG** moved to change his previous day's motion to postpone HB 465 until and through Monday. **#2 Motion carried 15-5 with Reps. Laszloffy, Adams, Curtiss, Holden and Rice voting no.**

Discussion: **Rep. Noennig explained the ruling on postponing and the word "indefinitely" and why he made the above motion.**

EXECUTIVE ACTION ON HB 419

Motion: **REP. GALLUS** moved that **HB 419 DO PASS. #3**

{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 23.4}

Motion: **REP. SHOCKLEY** moved that **HB 419 BE AMENDED. #4 EXHIBIT(juh37a04)**

Discussion: **Reps. Hurdle, Shockley, Noennig, Younkin, Harris, Laszloffy, Gallus, Newman, Clark, Peterson, Holden.**

{Tape : 2; Side : B; Approx. Time Counter : 23.4 - 29.7}

Vote: **Motion #4 carried 16-3 with Reps. Gutsche, Harris and Mangan voting no.**

Motion: **REP. SHOCKLEY** moved that **HB 419 DO PASS AS AMENDED. #5**

Discussion: **Reps. Peterson, Rice, Gallus, Shockley.**

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 22, 2001 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 213, HB 521, HB 496, 3/19/2001
Executive Action: SR 21, HB 214, HB 66

HEARING ON HB 213

Sponsor: **REP. BRAD NEWMAN, HD 38, BUTTE**

Proponents: **Mike McGrath, Attorney General**
Judy Wang, Assistant City Attorney, Missoula
Marty Ludemann, Captain, City of Missoula Police Department
Troy McGee, MT. Chief Police Association

REP. BRAD NEWMAN, HD 38, BUTTE, summarized the need to have uniformity of protection. He urged support of this bill.

HEARING ON HB 521

Sponsor: REP. BRAD NEWMAN, HD 38, BUTTE

Proponents: John Connor, MT. County Attorneys Association

Opponents: None

Opening Statement by Sponsor:

REP. BRAD NEWMAN, HD 38, BUTTE, gave examples of sentencing enhancements in criminal codes. He expressed the enhancement of the penalties system in this bill. He said due process concerns with the defendant could become an issue.

Proponents' Testimony:

John Connor, Mt. County Attorneys Association, explained a case dealing with hate crime. He mentioned the problems using the enhancement statutes and what the law requires. He felt this bill would be appropriate to use.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. O'NEIL asked about the separate element of offense. **John Connor** explained the differences of the offenses. He said proof of the underlying facts of the enhancement should be presented to the jury.

{Tape 2; Side A}

CHAIRMAN GROSFIELD pointed to page two of the bill and asked if sentencing enhancements were on the books. **John Connor** answered yes, they are on the books and he said who drafted the bill and how broad it is to include enhancements in the future.

CHAIRMAN GROSFIELD asked what line ten refers to. **John Connor** said it refers to subsequent statute providing for enhancement due to a monetary loss.

CHAIRMAN GROSFIELD asked what the monetary value refers to. **REP. NEWMAN** didn't have an answer to that issue. He explained a crime

of a certain amount causing penalties, the enhancement would be in existence.

CHAIRMAN GROSFIELD asked if there should be an exclusive list. **REP. NEWMAN** said this list was narrow and not very broad. He said the enhancing factor offers burdens on the state to plead and prove the existence factor.

CHAIRMAN GROSFIELD asked if this would provide notice or not. **REP. NEWMAN** said this process needs to be modified.

SEN. O'NEIL asked if it would be a sentence enhancement if an offender did a similar crime before. **REP. NEWMAN** said Montana Law allows for enhanced penalties for persistent felony offenders.

SEN. O'NEIL asked if it should be included within this bill. **REP. NEWMAN** said there was already a statutory procedure for seeking and obtaining the persistent felony offender information.

Closing by Sponsor:

REP. BRAD NEWMAN, HD 38, BUTTE, summarized the bill and urged support of this bill.

HEARING ON HB 496

Sponsor: **REP. LARRY JENT, HD 29, BOZEMAN**

Proponents: **Mike Moore, Attorney, Missoula**
Tom England, Owner Collection Agency, Helena
Bob Pyfer, Executive Vice President, MT. Credit Unions
Cecil Hawkins, Reverend, Billings
Kevin Moser, President, MT. Collection Association
Steve Wade, MT. Collectors Association
Tom Ellis, District President, Wells Fargo Bank
George Bennett, Attorney, MT. Bankers Assoc.
Wayde Cooperider, Deputy Sheriff, Lewis & Clark County

Opponents: **Richard Rowe, Process Server and Levying Officer, Missoula**

Opening Statement by Sponsor:

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 23, 2001 at 8:15 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch
Jodi Pauley, Transcriptionist

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: None
Executive Action: HB 195, HB 208, HB 219, HB 254, HB 208, HB 261, HB 359, HB 521, HB 563, HJ 17, HB 496, HB 290, HB 570, HB 182

EXECUTIVE ACTION ON HB 195

Motion: **SEN. RIC HOLDEN moved HB 195 BE CONCURRED IN.**

Discussion:

have the right to have their records deleted once they reach the age of majority.

SEN. GRIMES discussed a felony offense on page one. He felt there should be records of DNA for serious crimes, however, he said there were felonies for certain things as check forgery, bribery, and he asked if these were included in the DNA database also. **SEN. HALLIGAN** said the DNA should be on record forever.

SEN. DOHERTY said DNA testing should apply to a violent crime that was a felony, but not apply for simple felonies. **Valencia Lane** gave the descriptions of offenses in Title 45.

SEN. O'NEIL felt some felonies might need to be changed to misdemeanors, and he added some of the misdemeanors also needed to be included in this database.

Substitute Motion/Vote: SEN. DOHERTY moved a conceptual amendment to include the DNA in Chapter 5 and Chapter 9 of Title 45. Motion carried unanimously.

Motion/Vote: SEN. GRIMES moved HB 359 BE CONCURRED IN AS AMENDED. Motion carried 8-0 with SEN. GROSFIELD being excused.

EXECUTIVE ACTION ON HB 521

Motion: SEN. O'NEIL moved HB 521 BE CONCURRED IN.

Discussion:

SEN. O'NEIL referred to page two and mentioned there was a listing of sentencing enhancing acts and from testimony there was discussion this was not an inclusive list.

Substitute Motion: SEN. HALLIGAN moved a conceptual amendment to strike on page two, line three beginning with "an" and through "place" to line 14.

Discussion:

SEN. HALLIGAN said they don't need the list at all as something might be omitted. **SEN. O'NEIL** said the reason the list was there was to give some directions to the prosecutors around the state.

SEN. GRIMES said he didn't know if having it in or out was that important as prosecutors should know already and he did not want to intentionally limit it.

SEN. MCNUTT stated a prosecuting attorney would have the list of enhancements and they should not limit it or have the misunderstanding that it was only pertaining to this list.

SEN. HALLIGAN said the act already had to be proved in the original case, charged in the information, complaint, indictment, and proved beyond a reasonable doubt. He didn't feel the list was needed.

Vote: **Substitute Motion carried 7-0 to the amendment with Sen. Doherty and Sen. Grosfield being excused.**

Substitute Motion/Vote: **SEN. HALLIGAN moved a conceptual amendment to strike subsection(5) on page two. Motion carried 7-0.**

Discussion: **SEN. GRIMES** discussed the bill and the ramifications of enhancement and how they would be applied. He wondered about subsection(3). **Valencia Lane** explained the subsection and mentioned a U.S. Supreme Court decision from October 1999, Apprendi vs. New Jersey. She discussed the case and said the court applied an enhancement statute at this time.

Motion/Vote: **SEN. HALLIGAN moved HB 521 BE CONCURRED IN AS AMENDED. Motion carried 7-0.**

{Tape 2; Side B}

EXECUTIVE ACTION ON HB 563

Motion: **SEN. O'NEIL moved HB 563 BE POSTPONED INDEFINITELY.**

Discussion:

SEN. HALLIGAN said they heard testimony in which two-thirds of the sexual cases were turned down because they cannot be proven. He said this bill allowed for the statute of limitations to be extended similar to homicide. He felt the bill was necessary because there were many victims who didn't come forward because they were embarrassed about what had happened.

SEN. GRIMES liked the thought of having an expanded statute of limitation to try and get some of these people. He had concern with someone trying to accuse their father of incest, for example, years later when it didn't even happen.